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## FAX TRANSMISSION

Total 13 pages, including cover sheet

To: Commissioner of Patents  
 U.S. Patent and Trademark Office  
 Mail Stop Patent Extension      Fax no.: (571) 273-8300

From: Tel. (202) 736-8000  
 Date: 24 April 2007

Re:

Serial No.: 10/015,967

Group Art Unit: 1646

Confirmation No.: 9428

Examiner: Dong Jiang

Filed: December 7, 2001

Attorney Ref. 22338-00501/  
P1447R1

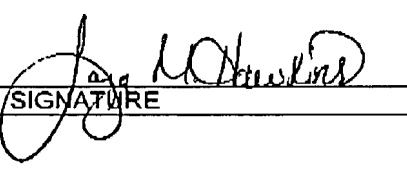
First Inventor: Dan L. EATON

For: INTERLEUKIN-8 HOMOLOGOUS POLYPEPTIDES AND THERAPEUTIC  
USES THEREOF

## CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

I CERTIFY THAT THE FOLLOWING DOCUMENTS ARE BEING TRANSMITTED TO THE USPTO AT  
FAX NUMBER (571) 273-8300 THE DATE SHOWN:

1. Application for Patent Term Adjustment under § 37 C.F.R. 1.705(b) (4 pgs)
2. Attachment A (3 pgs)
3. Attachment B (5 pgs)

  
SIGNATUREVicky M. Hawkins  
PRINTED NAME4/24/07  
DATE

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dan L. Eaton et al.	Group Art Unit: 1646
Serial No.: 10/015,967	Examiner: Dong Jiang
Filed: December 7, 2001	Attorney Docket No: 22338-501 (P1447R1)
Confirmation No.: 9428	
Title: Interleukin-8 Homologous Polypeptides and Therapeutic Uses Thereof	

Mail Stop: Patent Extension  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)**

Sir:

The Applicant respectfully submits this Application for Patent Term Adjustment to request reconsideration of the patent term adjustment determination for the above-identified application that was provided in the Notice of Allowance. This Application for Patent Term Adjustment is being filed concurrently with the payment of the issue fee for this application and is therefore timely under 37 C.F.R. § 1.705(b). As required by § 1.705(b)(1), the Applicant expressly authorizes the Commissioner to charge the required fee for this Application under 37 C.F.R. § 1.18(e) for Patent Term Adjustment to Sidley Austin, LLP's Deposit Account Number 18-1260. Pursuant to § 1.705(b)(2), the Applicant provides the following statement of facts.

As detailed below, the Applicant believes that the patent application is entitled to 298 days of patent term adjustment due to delay by the United States Patent and Trademark Office ("PTO"). However, on January 24, 2007, the PTO issued a Notice of Allowance for the above-identified application that includes a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) indicating the patent term adjustment date is 0 days. Applicant believes that the patent term adjustment date noted in the Notice of Allowance is incorrect and respectfully requests

Patent Application No. 10/015,967

Attorney Docket No. 22338-501 (P1447R1)

Application for Patent Term Adjustment under § 1.705(b)

reconsideration. Pursuant to § 1.705(b)(2)(iii), Applicant notes that the application is not subject to a terminal disclaimer.

**Current Term Adjustment Calculation Provided in The Notice of Allowance**

The PTO's explanation of the patent term adjustment for the application is provided in the Patent Application Information Retrieval ("PAIR") system (Attachment A). As indicated in the PAIR document, the PTO calculated the period of adjustment in patent term due to examination delay under § 1.703(a)-(e) as 432 days and the reduction in the period of adjustment under § 1.704 due to Applicant delay as 576 days.

Specifically, the total 432 days of examination delay under § 1.703(a)-(e) includes 42 days related to the initial response to the filing of the application, 1 day related to the final rejection, and 389 days related to the issuance of the Notice of Allowance after an appeal brief was filed. The Applicant believes that the 432 days of examination delay is correct.

With respect to the reduction in the period of adjustment for Applicant delay under § 1.704, however, the PTO's calculated total of 576 days includes 90 days related to a response to an Office Action filed on December 5, 2003, 44 days related to the filing of a Notice of Appeal on August 19, 2004, and 442 days related to the filing of an Appeal Brief and Supplemental Response on August 31, 2005 and November 16, 2006, respectively. Applicant agrees with the reduction in the period of adjustment for Applicant delay regarding the 44- and 90-day periods discussed above and provided in the PAIR document. However, as described below in detail, the Applicant does not believe that the 442-day period pertaining to the Appeal Brief and Supplemental Response filed on August 31, 2005 and November 16, 2006 is Applicant delay under § 1.704. As such, the Applicant believes that the total Applicant delay is 134 days (*i.e.*, 90 days plus 44 days).

**Incorrect Calculation Regarding the 442-day Period Under § 1.704**

The PAIR document provides that there is a reduction in the period of adjustment due to Applicant's delay of 442 days beginning on August 31, 2005, when the Applicant reinstated an

Patent Application No. 10/015,967

Attorney Docket No. 22338-501 (P1447R1)

## Application for Patent Term Adjustment under § 1.705(b)

appeal and filed a Supplemental Appeal Brief, until November 16, 2006, when the Applicant filed a "Supplemental Response." The Applicant does not believe that this 442-day period is a proper reduction in the period of adjustment under § 1.704. Applicant believes that the calculation error occurred because the PAIR document does not accurately reflect the transactions that occurred during the prosecution of the application.

Specifically, as indicated above, the Applicant reinstated an appeal and filed a Supplemental Appeal Brief ("Applicant's Brief") on August 31, 2005. The appeal was reinstated because the Examiner had previously issued an Office Action imposing a new final rejection and re-opening prosecution. After the Appeal Brief was filed, however, the PTO failed to respond to the brief until it mailed the Notice of Allowance on January 24, 2007. Due to the PTO's failure to respond to the appeal brief, the applicant submitted a status request for the application on August 30, 2006. In response to that request, the Examiner contacted the undersigned Attorneys for the Applicant on November 2, 2006 to inform them that the application contained allowable subject matter, assuming certain amendments to the claims would be made. During the November 2, 2006 interview, the Examiner and the Applicant, through its attorneys, reached agreement regarding the claims. The Applicant indicated that it would submit a supplemental amendment and information disclosure statement so that the agreed upon claim amendment would be made and prosecution concluded. The Interview Summary form for the November 2, 2006 interview is provided in Attachment B. On November 16, 2006, pursuant to the interview, the Applicant submitted a Supplemental Amendment and Information Disclosure Statement ("Supplemental Response"). The Supplemental Response notes the interview on November 2 and states that the response and amendment were filed pursuant to the interview. *See* Supplemental Response, page 4.

The PAIR document, however, does not include the Interview Summary for the November 2, 2006 interview or reflect the fact that the Applicant's Supplemental Response was submitted at the request of the Examiner during that interview. Rather, the PAIR document simply notes that the Supplemental Response was submitted 442 days after the Applicant's Brief. As such, the PTO improperly counted that entire period as Applicant delay under § 1.704. Section 1.704(c)(8) provides that the patent term adjustment should not be reduced with respect

Patent Application No. 10/015,967

Attorney Docket No. 22338-501 (P1447R1)

Application for Patent Term Adjustment under § 1.705(b)

to "a supplemental reply or other paper expressly requested by the examiner." According to the PTO, a supplemental reply requested by the examiner includes "a supplemental amendment carrying into effect agreements reached between the applicant and the examiner" (*see* 65 Fed. Reg. 56366, 56385 (Sept. 18, 2000)). The Applicant asserts, therefore, that the time period between the filing of the Applicant's Brief of August 31, 2005 and the Supplemental Response of November 16, 2006 should not have been counted against the Applicant because, under § 1.704(c)(8), the Supplemental Response was filed to carry into effect the agreement reached between the Applicant and the Examiner during the November 2, 2006 interview.

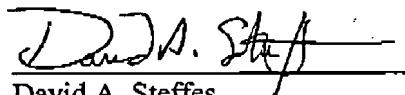
**Final Proposed Calculation of the Patent Term Extension**

For the foregoing reasons, the Applicant believes that the reduction in the period of adjustment due to Applicant delay is 134 days (576 – 442 (the incorrectly charged time period) = 134). As such, the Applicant believes that the correct total patent term adjustment for the above-identified application is 298 days (432 – 134 = 298) (*see* 37 C.F.R. § 1.703(f)).

The Applicant notes that a final patent term adjustment is determined based upon the actually issue date of the patent. *See, e.g.*, 37 C.F.R. § 1.702. Accordingly, the Applicant reserves the right to make additional arguments regarding the patent term adjustment provided by the PTO based on the actual date of issuance of the patent.

Respectfully submitted,

April 24, 2007

  
\_\_\_\_\_  
David A. Steffes  
Registration No. 46,042  
Attorney for Applicant

SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
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(202) 736-8000

**ATTACHMENT A**

10/015,967	INTERLEUKIN-8 HOMOLOGOUS POLYPEPTIDES AND THERAPEUTIC USES THEREOF	04-20-2007::17:44:44
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/015,967

Filing or 371(c) Date:	12-07-2001	USPTO Delay (PTO) Delay (days):	432
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	576
Post-Issue Petitions (days):	+0	Total PTA (days):	0
USPTO Adjustment (days):	+0	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
01-24-2007	Mail Notice of Allowance	389	
01-22-2007	Notice of Allowance Data Verification Completed	↑	
12-14-2006	Date Forwarded to Examiner	↑	
11-16-2006	Supplemental Response	442	
08-30-2006	Miscellaneous Incoming Letter	↑	
09-09-2005	IFW TSS Processing by Tech Center Complete	↑	
12-14-2006	Date Forwarded to Examiner	↑	
08-31-2005	Appeal Brief Filed		↑
08-31-2005	Notice of Appeal Filed		↑
06-03-2005	Mail Non-Final Rejection		
05-31-2005	Non-Final Rejection		
03-24-2005	Date Forwarded to Examiner		
03-18-2005	Appeal Brief Filed		
03-18-2005	Request for Extension of Time - Granted		
03-23-2005	Mail Advisory Action (PTOL - 303)		
03-18-2005	Advisory Action (PTOL-303)		
02-23-2005	Date Forwarded to Examiner		
02-15-2005	Amendment/Argument after Notice of Appeal		
02-15-2005	Request for Extension of Time - Granted		
09-21-2004	Mail Advisory Action (PTOL - 303)		
09-20-2004	Advisory Action (PTOL-303)		
08-31-2004	Date Forwarded to Examiner		
08-19-2004	Amendment/Argument after Notice of Appeal		
08-19-2004	Notice of Appeal Filed	44	
08-19-2004	Request for Extension of Time - Granted		↑
08-19-2004	Request for Extension of Time - Granted		↑
08-19-2004	Workflow incoming amendment IFW		↑
04-06-2004	Mail Final Rejection (PTOL - 326)	1	
04-05-2004	Final Rejection		↑
12-05-2003	Information Disclosure Statement (IDS) Filed		↑
02-04-2004	Date Forwarded to Examiner		↑

12-05-2003	Response after Non-Final Action	90
12-05-2003	Request for Extension of Time - Granted	↑
06-06-2003	Mail Non-Final Rejection	↑
06-02-2003	Non-Final Rejection	
04-11-2003	Date Forwarded to Examiner	
04-07-2003	Response to Election / Restriction Filed	
03-07-2003	Information Disclosure Statement (IDS) Filed	
03-21-2003	Mail Restriction Requirement	42
03-20-2003	Requirement for Restriction / Election	↑
01-21-2003	Case Docketed to Examiner in GAU	↑
04-08-2002	Information Disclosure Statement (IDS) Filed	↑
08-09-2002	Application Dispatched from OIPE	↑
08-09-2002	Application Is Now Complete	↑
06-05-2002	Additional Application Filing Fees	↑
06-05-2002	A set of symbols and procedures, provided to the PTO on a set of computer listings, that describe in	↑
06-05-2002	Small Entity Statement (37 CFR 1.27)	↑
06-05-2002	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic	↑
07-03-2002	CRF Is Good Technically / Entered into Database	↑
05-15-2002	Notice Mailed--Application Incomplete--Filing Date Assigned	↑
04-16-2002	IFW Scan & PACR Auto Security Review	↑
04-12-2002	IFW Scan & PACR Auto Security Review	↑
12-07-2001	Initial Exam Team nn	↑

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**ATTACHMENT B**

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# Fax Cover Sheet

Date: 15 Nov 2006

To: Gary Veron	From: Dong Jiang
Application/Control Number: 10015,967	Art Unit: 1646
Fax No.: 200-736-8711	Phone No.: 571-272-0872
Voice No.: 202-736-8387	Return Fax No.: (571) 273-8300
Re: interview summary	CC:
<input type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> For Comment <input type="checkbox"/> For Reply <input checked="" type="checkbox"/> Per Your Request	

Comments:

Number of pages 4 including this page

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<b>Interview Summary</b>	Application No.	Applicant(s)
	10/015,967	EATON ET AL
	Examiner Dong Jiang	Art Unit 1646

All participants (applicant, applicant's representative, PTO personnel):

(1) Dong Jiang. (3) David Steffes.  
 (2) Gary Veron. (4) \_\_\_\_\_

Date of Interview: 02 November 2006.

Type: a)  Telephonic b)  Video Conference  
 c)  Personal [copy given to: 1)  applicant 2)  applicant's representative]

Exhibit shown or demonstration conducted: d)  Yes e)  No.  
 If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: 33-39 and 41-43.

Identification of prior art discussed: \_\_\_\_\_.

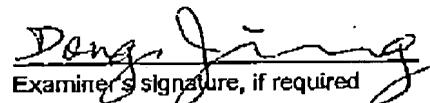
Agreement with respect to the claims f)  was reached. g)  was not reached. h)  N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
Examiner's signature, if required

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### Summary of Record of Interview Requirements

**Manual of Patent Examining Procedure (MPEP), Section 719.04, Substance of Interview Must be Made of Record**  
 A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

**This 37 Code of Federal Regulations (CFR) § 1.133 Interviews**

**Paragraph (b)**

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

**37 CFR §1.2 Business to be transacted in writing.**

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the Interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted;
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
 (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

**Examiner to Check for Accuracy**

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

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Application No. 10/015,967

Continuation Sheet (PTOL-413)

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The examiner contacted the applicant for discussing potential allowance with proposed claim amendment. The examiner indicated that claims 33-35 would remain rejected under 35 U.S.C. 112, first paragraph, for lack of adequate written description (80%, 85% and 90% variants); that claims 36 and 37 would require the functional limitation; and that claims 38 and 39 and their dependent claims would be objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants would consider submitting supplemental amendment, and additional IDS for consideration.